

**BEFORE THE
BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation
Against:

RINEA LYN LUCIA

**Occupational Therapy License
No. OT 6433**

Respondent.

Case No. OT2005-66

OAH No. L2008060700

DECISION AFTER NONADOPTION

This matter came on regularly for hearing on November 17, 2008, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California. Heather Martin (Complainant) was represented by Brian G. Walsh, Deputy Attorney General. Rinea Lyn Lucia (Respondent) was present and was represented by Gary Wittenberg, Attorney at Law. The record was held open through January 5, 2009, and on that day the record was closed, and the matter was deemed submitted for decision.

On January 14, 2009, the Administrative Law Judge's Proposed Decision was received by the California Board of Occupational Therapy (Board). Thereafter, the Board declined to adopt said Proposed Decision and issued a Notice of Non-Adoption of Proposed Decision dated April 21, 2009, and the transcript was ordered. The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered pursuant to Government Code section 11517(c)(2)(E), the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Complainant made the Accusation in her official capacity as Executive Officer of the Board of Occupational Therapy, Department of Consumer Affairs, State of California.

2. On February 28, 2003, the Board issued Occupational Therapy License No. OT 6433 to Respondent. The license was scheduled to expire on December 31, 2008, unless renewed. The record does not indicate whether the license has been renewed. However, if it has not, the Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

The Criminal Convictions

3. On April 28, 2006, in the Superior Court of California, County of San Bernardino, in Case No. MMB011229, Respondent pled nolo contendere and was convicted of violating Penal Code section 415 (Disturbing the Peace), a misdemeanor.

4. Respondent was placed on conditional and revocable release for a period of 12 months under various terms and conditions including payment of \$110 to the Victim Restitution Fund, and a requirement that she stay away from the Bank of America in Yucca Valley, California.

5. The facts and circumstances underlying the 2006 conviction occurred when Respondent attempted to cash a third-party check at a bank in which she did not have an account. She refused to submit a fingerprint when asked to do so pursuant to bank policy, she became belligerent with bank personnel, and she refused to leave the bank when requested to do so.

6. Complainant alleged the following conviction as a factor in aggravation: On October 4, 2001, in the Superior Court of California, County of San Bernardino, in Case No. MMB007187, Respondent pled nolo contendere and was convicted of violating Penal Code section 415 (Disturbing the Peace), a misdemeanor.

7. As a result of that conviction, Respondent was ordered to pay \$110 to the Victim Restitution Fund.

8. The facts and circumstances underlying the conviction arose out of an altercation Respondent had with her husband. When police arrived, her husband became combative with them. Respondent attempted to interfere in the ensuing scuffle between her husband and the police. When police ordered her to stay away, she grabbed the microphone on the police radio in a patrol unit and began shouting into it. Police were required to use pepper spray to subdue her.

9. Complainant did not establish that either the 2001 conviction or the 2006 conviction was substantially related to the qualifications, functions or duties of an occupational therapist.¹ However, Complainant did establish that the acts underlying the 2006 conviction constituted unprofessional conduct.

10. Complainant alleged, *inter alia*, that Respondent engaged in unprofessional conduct by failing to communicate with the Board concerning the arrest that led to her 2006 conviction, despite three written requests from the Board that she do so. That allegation was unproven. Respondent credibly testified at the administrative hearing that she communicated with the Board on more than one occasion concerning that arrest. Aside from the three letters, Complainant offered no evidence to the contrary. The existence of the three letters infers a failure to communicate following the issuance of the first two letters only.

False Statement on License Renewal Application

11. Respondent's license was scheduled to expire on December 31, 2006. On December 16, 2006, Respondent prepared a license renewal application for submission to the Board. The application contained the following question:

¹ Because the 2001 conviction was not a charging allegation in the Accusation, it would not constitute cause for discipline even if it was substantially related to the qualifications, functions or duties of an occupational therapist.

"Since you last renewed your license, have you been disciplined by another public agency or been convicted of or pled nolo contendere to any violation of any law of any state in the United States or a foreign country?"

12. Respondent checked the box marked "No" in response to the above question, and she signed her license renewal application, swearing under penalty of perjury that the information she had provided was true and correct. However, her answer to the question was not correct in that, since her previous license renewal, she had suffered her 2006 criminal conviction.

13. Respondent mailed the license renewal application on January 2, 2007. The Board received it on February 9, 2007.

14. On February 9, 2007, the Board received from Respondent a handwritten addendum to her license application on which she indicated that, on March 10, 2006, she had been convicted of misdemeanor trespassing. Both the date and the crime of which she had been convicted were incorrect.

15. At the administrative hearing, Respondent testified that she did not intend to mislead the Board about her conviction. She failed to disclose the conviction on her license renewal application because her arrest occurred during one year, but her conviction occurred in another. She was confused as to whether the conviction was to be disclosed on that license renewal application or on the following one. She was not concerned that the Board would not learn of the conviction because the conviction was a matter of public record. Respondent further testified that she submitted the addendum after someone at the Board told her she had to disclose the conviction at that time. Respondent's testimony was not convincing. The language of the question on the license renewal application was clear that Respondent was required to disclose any conviction or nolo contendere plea that had occurred since her previous license renewal. Both her plea and her conviction had occurred during that time period. Had Respondent been confused as to whether disclosure of the conviction was necessary, a timelier telephone call to the Board would have eliminated that confusion. Such a call would not have been onerous because Respondent held the license renewal application from December 16, 2006, to January 2, 2007, before mailing it.

Alleged Practice of Occupational Therapy Without an Appropriate Credential

16. Complainant alleges in the Accusation that Respondent continued to work as an occupational therapist between January 1, 2007, the day after her license was scheduled to expire, and February 14, 2007, the date it was renewed. That allegation was not proven. Although Respondent did work as an occupational therapist during that time period, no evidence was offered to show that February 14, 2007 was the actual renewal date, and no evidence was offered to establish that a license renewal applicant was required to wait until the Board acted on the application and notified the applicant that the application had been approved, as opposed to license renewal being a ministerial act, effective as of the postmark date of the renewal application.

Mitigating and Aggravating Factors

17. Respondent thoroughly enjoys and is dedicated to her work. Throughout her career as an occupational therapist, she has earned high performance evaluations from her superiors, and she is well-respected by her co-workers for her competence and caring attitude toward her patients.

However, she consistently demonstrated an inability to acknowledge her responsibility in the incidents underlying the bases for discipline. She characterized her 2006 disturbing the peace conviction as a "misunderstanding" with the manager of the bank, and thought that the police would work it out when they arrived. She described her failure to disclose her 2006 conviction because she got mixed up with what year it took place, saying "And it was just a misunderstanding was all that it was." She further dismissed her concern with disclosing the conviction accurately by saying that it was public record. Such an attitude misplaces the responsibility of a licensee to respond honestly and accurately to questions from the Board.

Costs

18. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board \$7,176 for its costs of investigation and prosecution of the case. Respondent's points and authorities (Exhibit H) were not convincing and do not justify a denial of all requested costs. Complainant satisfied the statutory and regulatory requirements that entitle her to a presumption of reasonableness pursuant to Business and Professions Code section 125.3, subdivision (c).

19. However, of the six causes for discipline alleged in the Accusation, Complainant prevailed on only the second (only paragraph 12), third, fourth and fifth. The third, fourth and fifth causes for discipline relate to the same act (Respondent's failure to disclose her 2006 conviction on her license renewal application), and no investigation or prosecution was necessary to prove the fourth and fifth causes for discipline other than that required for the third. Further, the only documents necessary to prove the third, fourth and fifth causes for discipline were the original license renewal application and the addendum, both of which came directly from the Board.

20. In light of the facts set forth in paragraphs 18 and 19, above, the total costs reasonably incurred by the Board in connection with the proven allegations in the second, third, fourth and fifth causes for discipline, are deemed to be 25 percent of the original request. Complainant shall recover costs totaling \$1,794.

LEGAL CONCLUSIONS

1. Cause does not exist to discipline Respondent's occupational therapist license pursuant to Business and Professions Code section 2570.28, subdivision (e), for conviction of a crime substantially related to the qualifications, functions and duties of an occupational therapist, as set forth in Findings 3, 4, 5 and 9.

2. Cause exists to discipline Respondent's occupational therapist license pursuant to Business and Professions Code section 2570.28, subdivision (a), for unprofessional conduct, as set forth in Findings 5 and 9.

3. Cause exists to discipline Respondent's occupational therapist license pursuant to Business and Professions Code section 2570.28, subdivision (d), and California Code of Regulations, title 16, section 4120, subdivision (a)(3), for making a false statement on a license renewal application, as set forth in Findings 11, 12, 13, 14 and 15.

4. Cause exists to discipline Respondent's occupational therapist license pursuant to Business and Professions Code section 2570.28, subdivision (h), for committing a dishonest act substantially

related to the qualifications, functions or duties of an occupational therapist, as set forth in Findings 11, 12, 13, 14 and 15.

5. Cause exists to discipline Respondent's occupational therapist license pursuant to Business and Professions Code sections 480 and 2570.28, subdivision (o), for committing an act that would be grounds for denial of a license, as set forth in Findings 11, 12, 13, 14 and 15.

6. Cause does not exist to discipline Respondent's occupational therapist license pursuant to Business and Professions Code section 2570.28, subdivision (g), section 2570.3, and/or California Code of Regulations, title 16, section 4170, subdivision (d), for practicing occupational therapy without the appropriate credential, as set forth in Finding 16.

7. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 125.3, as set forth in Findings 18, 19 and 20.

The Convictions

8. The Board does not specifically define "substantial relationship" in its regulations. However, guidance on that issue may be found in the definitions of the term by other agencies. For example, in California Code of Regulations, title 16, section 1360, the Medical Board of California defines substantial relationship as follows:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

9. Other agencies have similar definitions. (See, e.g., Cal. Code Regs., tit. 16, §§ 1019 (Dental Board of California); 1399.20 (Physical Therapy Board of California); 1394 (Board of Psychology); 2521 and 2578 (Board of Vocational Nurse and Psychiatric Technician Examiners).)

10. Business and Professions Code sections 490 and 2570.28, subdivision (e) provide for license discipline because of a criminal conviction only if the crime is substantially related to the qualifications, functions or duties of the licensed activity. Complainant failed to demonstrate how an argument in a bank over cashing a check, or how a highly emotional altercation with a spouse that leads to an equally emotional altercation with police, bears a substantial nexus to either the qualifications, functions or duties of an occupational therapist.

11. However, although neither of Respondent's convictions was proven to be substantially related to the qualifications, functions or duties of an occupational therapist, the acts underlying the 2006 conviction do constitute unprofessional conduct.² "Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good

² The acts underlying the 2001 conviction are not alleged as constituting unprofessional conduct.

standing of a profession.” (Citation.) (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574, 146 Cal.Rptr. 653.)

12. There is nothing unusual about a conflict arising between parties in a business context. However, Respondent permitted such a conflict to escalate to an inappropriate level. She was made aware that the bank’s policy required her to provide a fingerprint because she was attempting to cash a third-party check and did not maintain an account at that bank. By refusing to provide the required fingerprint, her business with that bank was concluded. However, instead of cashing the check elsewhere (i.e., at her own bank, a bank with a different policy, or with the maker of the check), she became belligerent with bank personnel and then refused to leave the bank when requested to do so. That conduct was “unbecoming a member in good standing” of Respondent’s profession, and it constituted unprofessional conduct.

The Failure to Disclose the 2006 Conviction

13. Business and Professions Code section 2570.28 states in relevant part:
The board may deny or discipline a licensee for any of the following:

[¶] . . . [¶]

(d) Making or giving any false statement or information in connection with the application for issuance or renewal of a license.

14. As is more fully set forth in Factual Finding 15, above, Respondent’s explanation for her failure to disclose the 2006 criminal conviction on her license renewal application was not convincing. However, even if her failure to disclose the conviction had been deemed inadvertent and borne of confusion over whether disclosure was necessary, the controlling statute does not require an intent to withhold the information. Any false statement or information, regardless of intent, may subject a licensee to discipline.

Summary

15. Complainant established that Respondent engaged in unprofessional conduct in connection with a single business transaction, and failed to disclose a misdemeanor conviction on a license renewal application. Those violations are balanced against Respondent’s spotless professional history and reputation, and her dedication to her work. Given the evidence in this case, license discipline is warranted. However, license revocation is not. The public safety, welfare and interest should be adequately protected by a properly-conditioned probationary period.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Occupational Therapist License No. OT 6433, issued to Rinea Lyn Lucia, is REVOKED. However, the revocation is STAYED, and Respondent is placed on probation for three years upon the following terms and conditions.

///

///

///

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the practice of occupational therapy in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Board within five days of occurrence.

2. Compliance with Probation and Quarterly Reporting

Respondent shall fully comply with the terms and conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with probation. Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board.

3. Personal Appearances

Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Notification of Address and Telephone Number Change(s)

Respondent shall notify the Board, in writing, within five days, of a change of residence or mailing address, of her new address and any change in work and/or home telephone numbers.

5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

In the event Respondent should leave California to reside or to practice outside the State for more than 30 days, Respondent shall notify the Board or its designee, in writing, within 10 days, of the dates of departure and return. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until Respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California.

6. Notification to Employer(s)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of her license. This notification to the current employer shall occur no later than the effective date of this Decision. Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be made by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The report shall be on a form provided by the Board, and shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five days of any change in employment status.

Respondent shall notify the Board, in writing, within five days, if she is terminated from any occupational therapy or health care related employment, with a full explanation of the circumstances surrounding the termination.

7. Employment Requirements and Limitations

During probation, respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a registry or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. Supervision Requirements

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as an occupational therapist.

Respondent shall not function as a supervisor during the period of probation except as approved, in writing, by the Board.

9. Continuing Education Requirements

Respondent shall complete continuing education in the areas of Ethics for six (6) contact hours and Stress Management or Conflict Resolution for six (6) contact hours within six (6) months of the effective date of the Decision, unless otherwise approved by the Board. Within thirty (30) days of the effective date of the Decision, Respondent shall submit a written plan to comply with this requirement. The proposed plan shall include the titles of the courses, a course description or syllabus, and identify the provider. The Board shall approve such plan prior to enrollment in any course of study.

The continuing education work shall be in addition to the professional development activities required for license renewal.

Failure to satisfactorily complete the required continuing education as scheduled shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion, Respondent shall send the original certificate she receives for the coursework to the Board within thirty (30) days of completion. Respondent shall send the original certificate to the Board by certified mail, return receipt requested.

10. Maintenance of Valid License

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

11. Violation of Probation

If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. Investigation/Enforcement Cost Recovery

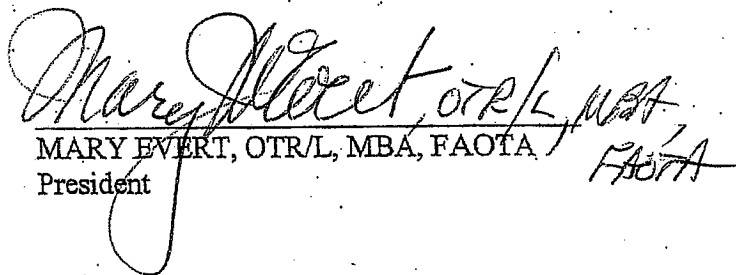
Respondent shall pay the Board \$1,794.00 as and for the reasonable costs of the investigation and prosecution in this matter pursuant to Business and Professions Code section 125.3. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months prior to the end of the probation term. Respondent shall indicate on the check or money order payable to the Board of Occupational Therapy and shall indicate on the check or money order that it is the cost recovery payment for Case No. OT-2005-66. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment is made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, Respondent shall be considered to be in violation of probation. A period of non-practice by Respondent shall not relieve Respondent of her obligation to reimburse the board for its costs.

13. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

DATED: July 21, 2009

California Board of Occupational Therapy


MARY EVERT, OTR/L, MBA, FAOTA
President